## FOOTNOTES

1. (Page 4)

It is apparent, however, that the substantial errors in Defendants' Appendix B made the allocation of the population of both of Missouri's metropolitan areas look better than the facts as established by the actual census figures. The mistakes made in regard to the population supposedly allocated to what are essentially rural districts are even more obvious. Defendants' Appendix B indicated that there were 3,000 more people in the rural Sixth District than the census shows are actually there; in the Eighth District, in which the 1960 census figures establish an actual population of 445,523, Defendants' Appendix B reflected a supposed population of only 439,984. When the question of justification of variances is reached, an obviously different question is presented in a case involving an alleged variance of + 8,003 than is presented in a case involving an undisputed variance of + 13,542.

1a. (Page 4)

Footnote 2 on page 6 of the dissenting opinion suggests that we were unfair to the Attorney General. We believe that the Attorney General's letters of October 11 and 17, 1967 referred to in that footnote cannot properly be read out of context but must be read in light of the pre-hearing proceedings revealed by the transcript of the September 26, 1967 conference. **Swann v. Adams III** was the subject of full discussion at that conference (September 26, 1967 transcript, pp. 32-34). It was there made clear that discussion of that and other cases was not to be considered by the Attorney General "as an invitation to either refrain from adducing evidence or to adduce evidence" (Ibid, p. 35). At that stage of this case, and at a time when the Attorney General's office did not have information concerning the accuracy of the figures presented in Appendix B, the defendants' sole legal contention was that "the variations are within the doctrine of **de minimis**" (Ibid, p. 34). At the close of the September 26, 1967 conference, the Assistant Attorney General stated:

> MR. DOWNEY: Judge, I think it is clear from what you have said that although our motion is founded entirely on the theory that the present congressional districts fall within a **de minimis** doctrine, that **the issue of the justification variations by factors incident to a rational State policy are inherent in this case**, in the event that the Court should find that the districts do not fall within the doctrine of **de minimis**; and as I have told the Court, **I do not anticipate at this time that production of evidence on the issue of rational State policy to explain the variations**; but when October 9 comes around, when we have had an opportunity to give this mat-

ter further consideration we may reach a position to adduce evidence. (Emphasis ours, Ibid, p. 36).

The Assistant Attorney General was advised at the September 26, 1967 conference that leave would be granted and full opportunity would be afforded to permit him "to put an alternative string in your bow that . . . there are legally justified reasons to explain the disparities as we finally determine what they may be" (Ibid. p. 37).

As state in the text, after defendants learned that the actual population variances were greater than those set forth in defendants' pending motion, they advised the Court that defendants would like to adduce evidence. The letters of October 11 and 17, 1967 were written pursuant to the time table established at the pretrial conference (Ibid, pp. 21-29). Those letters did not need to and did not in fact reiterate that the Attorney General had elected to introduce evidence on the "issue of justification," also described at the September 26, 1967 conference as "the issue of rational State policy to explain the variations" about which the Attorney General had changed his mind between September 26, 1967 and October 9, 1967, when the stipulation of fact established what variations were actually involved. We believe that judgment as to whether the Attorney General was fairly or unfairly treated by the sentence in the text must be made by consideration of all and not isolated parts of the record.

2. (Page 5)

Stipulation Exhibits 16, 18, 20, 23, 25 and 27, and the deposition testimony of the Chairman of the Senate Reapportionment Committee establish that accurate 1960 census figures in fact were made available to the 1967 Missouri Legislature by election officials in the St. Louis and Kansas City metropolitan areas and by the Bureau of the Census. The House Majority leader, however, identified a map of Missouri used by him on which certain population figures had been written in long hand with red ink. That witness testified that the blue ink figures on that exhibit, reflecting an unexplained shift of 5,000 population from District 1 to District 3 in the St. Louis metropolitan area, were in his hand writing. The Chairman of the Senate Reapportionment Committee testified that he had used a similar map. He testified that the longhand red ink figures on his map had been copied from the longhand figures that appeared on the House Majority Leader's map. The composite of these longhand figures, the source of which is still unexplained, eventually appeared on Appendix B attached to defendants' pending motion.

Interestingly enough, the Senate Chairman volunteered that he had used his map in connection with each of the 1961, 1965, and 1967 Acts and that he had but recently noticed that Dade

County's 1960 census population of 7,577 had always incorrectly appeared on his map as 12,647. That error of long standing did not affect defendants' Appendix B because the population there reported for District 7, in which Dade County was located, was one of the two districts for which the 1960 census figures were accurately stated. The explanation for that phenomenon does not appear of record.

**Addendum to Footnote 2:**

On page 9-10 of his dissenting opinion Judge Matthes states, contrary to the finding of the majority opinion, that "inaccurate population data" were furnished the Legislature by "the various Election Boards in the City of St. Louis, St. Louis County, and Jackson County, which encompasses the Kansas City area." That finding is used as a base for the further finding that "the sponsors of the 1967 Act clearly labored under the misguided impression that the sources of the inaccurate figures were reliable."

As we have stated, we checked the accuracy of the data furnished by the election officials against the stipulated population data from the Bureau of the Census and found it to be accurate.

To state that the Legislature had but did not use accurate 1960 federal census figures is not to question the good faith of any member of the Missouri Legislature. That fact, it seems to us, forecloses that any public official other than the members of the Legislature can be charged with responsibility for the casual manner in which the important task of congressional apportionment was in fact approached by the 1967 General Assembly.

3. (Page 7)

In spite of the fact that we expressly rejected defendants' political compromise arguments in **Preisler II** (see footnote 7 and 20, and accompanying text on pages 968 and 980 of 257 F.Supp.) defendants and intervenors again contend that the 74th Missouri General Assembly produced the best possible bill that politics would permit. Defendants point to the fact that the "Majority and Minority Leaders of both Houses of the Missouri Legislature have testified that the 1967 Act is a reasonable legislative compromise." Intervenors again contend that "the 1967 Act is a reasonable legislative compromise and in fact the best that could be obtained as a practical matter." In reflective moments, we have pondered what response would be given by members of the General Assembly to an effort that would attempt to justify a refusal to enforce a law enacted by that legislative body on the ground that it was politically inexpedient, as a matter of practical politics, for the offender to have complied with such a law.

4. (Page 7)

The full significance of the Supreme Court's affirmance of **Preisler II** and vacation of **Grills v. Branigin's** judgment must be assayed in light of **Preisler II's** express refusal to follow the rationale of "**Grills v. Branigin** and that of still earlier cases, both federal and State, that attempted to apply standards other than those set forth in Art. I, §2 of the Constitution as construed by **Wesberry v. Sanders**, to a congressional reapportionment case. The cases in addition to **Grills v. Branigin** that this court expressly refused to follow in **Preisler II** were **Bush v. Martin II**, S.D. Tex. 1966, 251 F.Supp. 484, **Moore v. Moore**, S.D. Ala. 1965, 246 F.Supp. 578; **Kirby v. Illinois State Electoral Board**, N.D. Ill. 1965, 251 F.Supp. 908, **People ex rel. Scott v. Kerner**, 33 Ill. 2d 460, 211 N.E.2d 736 (1965); and **Levitt v. Maynard**, 105 N.H. 447, 202 A.2d 478 (1964).

5. (Page 8)

Mr. Justice Harlan has consistently and unsuccessfully advocated the view that the rules formerly applicable to judicial review of apportionment cases should still be the law. A good example of how the old rules were applied is illustrated by the judicial treatment given Missouri's constitutional command that Missouri's congressional districts "shall be composed of contiguous territory as compact and as nearly equal in population as may be." Art. 3, Section 45, 1945 Missouri Constitution.

When Mr. Phillips, delegate from St. Louis, proposed that constitutional provision to the 1945 Missouri Constitutional Convention, he stated:

> MR. PHILLIPS (of St. Louis City): . . .
> Mr. President, this Section is also Section 55 of the Constitution of the State of Virginia. It has been in the Virginia Constitution for over one hundred years and a great many of our redistricting statutes are exact copies of this language. Now, under the Constitution of the United States, Congress has the power to fix the times and places of holding elections for representatives, that is the State Legislature has that power and but Congress can alter these regulations. In 1911 Congress passed an act prescribing how the representative districts shall be made, but that act expired on the passage of the Act of June 18, 1929, which leaves no federal statute prescribing the manner in which state legislatures shall lay out the congressional districts. In the State of Illinois, the Legislature of Illinois made a horrible gerrymander. I have forgotten the exact facts, but I think one district had two or three times the population of the others and the Supreme Court of Illinois said that while they regretted the fact that they could not do anything about it,
> . . .

they did say that it was a terrible redistricting and that if they only had the power they would set it aside, but under the Act of Congress, why the Legislature, I mean under the Constitution of the Uunited States, why the Legislature was free to do as it saw fit.

Now, on the other hand, the same thing happened in the State of Virginia. The Legislature of Virginia made a horrible gerrymander of the congressional districts and the Supreme Court of Virginia held that by reason of this provision in the Virginia Constitution, they were bound by the thing because Congress had enacted no law on the subject.

Now, Missouri has been a shining example of gerrymander of representative districts for years and years and if we will put a thing like this in our Constitution, it will protect the people of our state against such a thing until Congress passes its own act. (Emphasis ours). [Debates 1945 Mo. Const. Conv. pp. 5559-5565]

The 1945 Missouri Constitutional Convention included what it thought would protect the people of this State; but it is clear that the Supreme Court of Missouri did not agree. The Supreme Court of Missouri in its pre-**Wesberry v. Sanders** opinion in **Preisler v. Hearnes**, Mo. Sup. Ct. en banc 1962, 362 S.W.2d 552, approved the 1961 Reapportionment Act eventually held to be unconstitutional by this Court in **Preisler I**, on the now rejected theory that "courts may not interfere with the wide discretion which the Legislature has in making apportionments . . . when legislative discretion has been exercised" (l.c. 555), and for the no longer valid reason that "any political compromise, for which there is any reasonable basis, is an exercise of legislative discretion that the courts must respect" (l.c. 557). Compare Footnote 12, infra. The refusal of the Supreme Court of Missouri to follow **Brown v. Saunders**, 159 Va. 28, 166 S.E. 105 (1932), the case to which Delegate Phillips made obvious reference, was the sort of rule that Mr. Justice Harlan has advocated in many of his dissents in apportionment cases. This Court, of course, is under duty to follow the majority and not the dissenting opinions of the Supreme Court.

5a (Page 8)

36 Law Week 3243 states that an appeal was filed in **Dinis v. Volpe**, December 4, 1967. We are advised that the order appealed from was one entered by the Massachusetts three-judge court on October 3, 1967 which approved a 1967 Congressional Redistricting Act of the Massachusetts Legislature under which the smallest district deviated from the ideal by minus 4,524 population and the largest district deviated from the ideal by plus 4,192 population. Law Week indicates that the question pre-

sented for Supreme Court review is the "competency of malapportioned state legislature to establish congressional districts in conformity with Fourteenth Amendment."

5b (Page 8)

The Supreme Court affirmed **Wells v. Rockefeller** (affirmed sub nom. **Rockefeller v. Wells**, No. 691, October Term, 1967) on December 18, 1967, by summary per curiam order. The Supreme Court's use of summary affirmance and reversals in Congressional apportionment cases, read closely with the rationale expressed by the lower courts, has provided a pattern that has been of substantial guidance to the lower courts in Congressional apportionment cases. **Wells v. Rockefeller**, for example, stated that the per curiam affirmance of **Preisler II**, 385 U.S. 450 (1967), the per curiam reversal of **Duddleston v. Grills**, 385 U.S. 455 (1967), and the per curiam in **Swann v. Adams III**, 385 U.S. 440 (1967), all decided January 9, 1967 were "determinative of the issues here." In **Preisler II**, for another example, this Court read the Supreme Court's summary dispositions in **Martin v. Bush**, 376 U.S. 222 (1964), **Drum v. Seawell**, 383 U.S. 831 (1966), and **Alton v. Tawes**, 384 U.S. 315 (1966), in a similar manner.

6. (Page 9)

The Oxford Dictionary defines PRACTICABLE as "capable of being carried out in action; feasible." Webster's definition is "that may be practiced or performed; capable of being put into practice; done or accomplished; feasible; as a **practicable** method; a **practicable** aim; a **practicable** good." Webster carries a note that "Practicable, practical are sometimes confused. That is Practicable (opposed **impracticable**) which is capable of being accomplished; that is Practical (opposed to **theoretical** and the like) which can actually be turned to account. See POSSIBLE."

The Oxford definition for PRACTICAL is "1. Of, pertaining, or relating to practice; exhibited in practice or action. Opp. to speculative, theoretical or ideal. 1617. b. Applicable in practice; practically useful. 1642. 2. Engaged in practice; practising, working. 1604. 3. Inclined to action (as opp. to speculation, etc); also, having ability for action. 1667. 4. That is such in practice; that is such in effect, though not nominally or professedly so; virtual. 1642. 5. Crafty, scheming, artful Foxe . . . P. politics is to do what you can and not what you ought. 1897."

Webster's definition states for PRACTICAL: "1. Of, pert. to, or consisting or manifested in, practice or action;—opposed to **theoretical, ideal** or **speculative**; as a **practical** question . . . 2. Available, usable, or valuable in practice or action, capable of being turned to use or account; useful; as a **practical** acquaintance with a language; practical economy."

7. (Page 12)

It is of interest to note that Mr. Justice Harlan would not have had any difficulty at all in affirming **Swann v. Adams III**. The avoidable variances involved in that Florida apportionment plan looked to Mr. Justice Harlan's tolerant eye as "relatively minor variations in population among some of the districts" 385 U.S. at 447. The Supreme Court's consistent rejection of the "classic legislative judgment" generality prohibits approval of a plan with avoidable variances by vague and subjective judicial classifications, unsupported by any evidence, on the firmly rejected theory that such variances are nevertheless to be treated as being of "no significant discrepancy" or as "'de minimis' departures." Such was the very purpose of **Swann v. Adams'** burden of proof rule.

8. (Page 13)

What has been said in the text is not to be read as suggesting that we believe it "possible to draw congressional districts with mathematical precision" **Wesberry v. Sanders**, supra at 18. Indeed, what is said is in recognition of the fact that congressional districts cannot be so drawn and that a plan not so drawn is not necessarily one that would not pass constitutional muster. Each case must be judged on its own facts.

9. (Page 18)

Almost all of the witnesses in **Preisler III's** hearing expressed grave concern about the prospect of electing Missouri's Congressional delegation at large. It probably is only of historical interest to note that at one point in Missouri's history one used fighting words if he suggested that Missouri elect her congressmen by any other method than by elections at large. Every Missouri Representative to Congress was elected at large until 1847. The Congress, by its Act of June, 1842, provided that all members of the House of Representatives "be elected by districts composed of contiguous territory . . .; no one district electing more than one Representative" (5 Stat. 491 (1842)). Missouri, in the face of that Congressional command, continued to elect its representatives at large, as did Georgia, Mississippi, and New Hampshire. The Twenty-eighth Congress was therefore faced with the problem of dealing with this recalcitrance.

Violent controversy arose in the Congress, the upshot of which was that the Congressmen elected at large were permitted by the Democratic majority to serve out their terms. James Butler Bowlin, elected at large from Missouri on the Democratic ticket, took the position that the Congress had no right or power to tell Missouri that she could not elect her Congressional delegation at large. That Missouri Congressmen, on page 189 of the Appendix to the Congressional Globe, 28 Cong. 1st Sess., said:

"Concede for a moment that Congress can district the States for the election of its own members, and you surrender enough to enable it to perpetuate its power forever." Alexander Stephens of Georgia, later Vice President of the Confederate States of America, elected at large from Georgia, took a similar position.

Missouri Congressman Bowlin vehemently protested against Congressional abolition of elections at large (under which application of the one-man-one-vote principle is automatic) and against creation of election districts by Congress where that body could command that "St. Louis should elect one representative, and the whole south and southwest of the State should elect another, making one vote in St. Louis equal to four or five in the country; because that would be a gross and palpable invasion of the franchise itself."

Missouri finally decided to comply with the Act of June, 1842 four years later and, except for the 1932 election, all of Missouri's Representatives to Congress have been elected by districts from 1846 to date. We have heard no protest against the possibility of malapportioning Missouri in favor of its urban population since 1844. But should that day come, judicial relief will be available to those whose constitutional right to an equal vote is abridged.

10. (Page 20)

In his Message of January 9, 1951 President Truman proposed that the 1842 election from districts requirement be re-enacted by the Congress. H.R. Doc. 36, 82nd Con., 1st Sess. President Truman's proposal was consistently incorporated in a series of bills introduced by House Judiciary Chairman Emanuel Celler, none of which have been enacted. See Congress and the Nation 1945-1964, published by Congressional Quarterly at page 1529.

It is of more than historical interest to note that Congressman Celler, writing in 1952, long before **Baker v. Carr** or **Wesberry v. Sanders** had been decided, stated that "the problem of [congressional apportionment] is one which involves the fundamental principle of equality which permeates our entire Constitution so that its denial imperils the very heart of our democracy" (17 Law. &U Cont. Prob. 268 at 274). He also stated that "a mere glance at the contours of various congressional districts and the wide variances in the population of these districts compels the conclusion that the drawing of congressional districts cannot be left to the whims and uncontrolled discretion of the states' legislaures" op. cit. supra, at 274), adding that "the history of apportionment in the United States, particularly since 1842 when standards were established for congressional districts, indicates conclusively that the one single factor that has always been lacking has been that of enforcement" (op. cit. supra, at 274-275). He therefore advocated in 1952, more than a decade

before **Wesberry v. Sanders**, that the Congress provide for "judicial review of the apportionment acts of states' legislatures in the United States district courts" (op cit. supra at 275). **Wesberry v. Sanders** obviated the necessity for any congressional action in that regard.

11. (Page 24)

We discuss elsewhere the legal consequences of defendants' failure to adduce evidence that the 1967 Legislature in fact took population trends into consideration. See Part I of Appendix C.

The undisputed facts show that the reason why the population of the rural District 6 was for the third successive time overvalued by a Missouri Legislature could not have been that the Legislature actually believed that district contained "areas with rapid population growth since 1960 and such population growth was taken into consideration," as defendants attempt to argue. An examination of population trends in the northwestern Missouri counties between 1950 and 1960 and since shows that, except by invading the population of Kansas City, Missouri by putting the population contained within its city limits into three separate congressional districts, the Fourth, Fifth and Sixth, the entire geographical area included in District 6 under the 1967 Act, i.e., all of the geographical area outside the city limtis of Kansas City, had a net loss in population between 1950 and 1960. Every county included in District 6 lost population except Platte, Clay and Ray Counties. Ray County's gain was 143. Very substantial parts of Clay and Platte Counties are inside the city limits of Kansas City. The net population loss for all counties included in District 6 was 40,467. The net gain in Platte, Clay and Ray Counties between 1950 and 1960 was 50,773. But of that gain, only approximately 12,043 was produced in areas outside the Kansas City limits. It is thus apparent that excluding the population of Kansas City within its city limits there was a net population loss of 28,424 for the area included in District 6; facts that hardly support the reason assigned by defendants in their brief for the drawing of that District's lines. We find that the 1967 Act robbed Kansas City of population within its city limits for the same obvious reasons that like robbery was attempted in the 1961 and 1965 Acts.

12. (Page 32)

The **Hitchcock** case illustrates that in the year 1912, the Supreme Court of Missouri had no difficulty in holding that it was "quite firmly wedded to the doctrine that constitutional requirements must be considered as mandatory, rather than directory" (146 S.W. at 50) and that "courts have jurisdiction to entertain an action, pass on the validity of acts apportioning the

state into senatorial districts, and to declare them invalid for infringement upon the Constitution . . ." (146 S.W. at 53). On the merits that case held that giving the city of St. Louis only six senators when a practicable division of the population required seven was a "most flagrant violation of the limited discretion granted by the Constitution to the Legislature" (146 S.W. at 54). Relying upon a Michigan case "Giddings v. Blacker, 93 Mich. 1, 52 N.W. 944, 16 L.R. A. 402), the Supreme Court of Missouri stated that "the time for plain speaking has arrived in relation to the outrageous practice of gerrymandering, which has become so common, and has so long been indulged in without rebuke that it threatens . . . the permanency of our free institutions. . . . There is not a school boy but knows what is the motives of these legislative apportionments; it is idle for the courts to excuse the action upon other grounds, or to keep silent as to the real reason. . . ." (146 S.W. at 57).

People who complain today about how federal courts describe the malapportioning action of State legislatures should become more familiar with what state courts had to say on that same subject fifty years ago. Present difficulties arose, of course, because state courts ceased to enforce the express provisions of state constitutions. See Footnote 5, supra.

13. (Page 59)

Defendants' table is purportedly based on data published in the Congressional Quarterly Weekly Report for September 16, 1966, and August, 1967 issue of the National Municipal League, and U.S. Senate Report No. 219, 90th Cong. 1st Sess., June 1, 1967, together with letters from the Attorney Generals of various states.

No such data comparable to defendants' "Total % of Deviation" column appears in any of those sources. The Congressional Quarterly Weekly Report for September 16, 1966, on page 814, does contain a table purporting to set forth "% Maximum Variations" form the various states. None of the figures on that table agree with any of the figures on defendants' table. We have not been favored with copies of the letters received from the various Attorney Generals.

The particular percentage figures used on defendants' table, in any event, are necessarily inaccurate. An examination of other percentage figures on the Table shows that defendants merely added together the percentages by which the largest and the smallest districts of a particular State purportedly deviated from the ideal district for that State. The sum of those percentages does not reflect the accurate percentage of deviation between the largest and smallest districts; the simple addition of

those figures will always produce a smaller percentage figure than that produced by accurate mathematical calculation.

The "Total % of Deviation" column on Defendants' Table is therefore smaller than what are the actual percentage deviations between the highest and lowest districts accurately calculated in accordance with proper mathematical principle.

This fact of mathematical life is illustrated by an examination of the Table introduced in the House of Representatives last April 25, 1967 by Representative Conyers of Michigan as it appears in the Congressional Record, 90th Cong. 1st Sess. page H4620. That table sets forth three columns: (1) % deviation between highest and lowest; (2) % deviation between largest and ideal; and (3) % deviation between smallest and ideal. The maximum deviation between the largest and smallest is always a larger percentage figure than the total of the two other columns. Defendants' Table, as we have noted, attempts to play another form of the numbers game in order to make larger figures look smaller on their table.

14. (Page 66)

Intervenors argue in a smilar vein that the "Supreme Court's affirmance of an apportionment in Mississippi which is less nearly perfect than ours compels the conclusion that our 1967 Act is within acceptable constitutional limits" and that "under these circumstances it would be an abuse of judicial power to strike down the hard product of the legislative process." We refrain from commenting on intervenors' claim of the 1967 Act as "our 1967 Act" other than to state that, so far as the record in this case shows, we are required to consider the 1967 Act as the 74th General Assembly of Missouri; not that of the intervenors.

We feel compelled to state further that it is our view that the right of any proper party to a direct appeal to the Supreme Court of the United States is ample protection against any alleged abuse of judicial power conferred on this Court by the Constitution and laws of the United States. In **Preisler II** we welcomed an appeal in order that the obvious question of conflict between the rationale of **Preisler II** and that of **Martin v. Bush II**, 251 F.Supp. 484, would be squarely presented, to the Supreme Court for its final resolution (257 F.Supp. at 979, footnote 17). We feel the same way about an appeal in **Preisler III** even though no present conflict with any other court is presented. All courts, both State and Federal, have followed and properly applied **Swann v. Adams III** and **Kilgarlin v. Hill** except the two-judge majority opinion in **Rhodes v. Lucas**, supra. That potential conflict was eliminated by the recent Supreme Court reversal of **Rhodes**.

15. (Page 67)

The "wholly separate question" of whether New York's 1961 Congressional apportionment act could withstand an Art. I, §2 challenge was presented in the most recent case of **Wells v. Rockefeller**, supra. Defendants argued in that case that the Supreme Court had "approved" the population variances by its affirmance of the New York three-judge court in **Wright v. Rockefeller**, and the similar Fourteenth Amendment case of **Honeywood v. Rockefeller**, 376 U.S. 222. The recent opinion of the New York three-judge court in **Wells v. Rockefeller**, supra, at page 5, disposed of defendants' argument by holding that: "It is thus clear beyond a doubt that neither **Wright** nor **Honeywood** dealt with population disparities. Nor can they be made a sound basis for an argument that the constitutionality of the present congressional districting statute has been sustained by these decisions."

16. (Page 70)

Consistent with our now well established practice of discussing every case upon which the defendants rely in these congressional apportionment cases, a further word should be added in regard to **Meeks v. Avery**, supra. As a part of their attempted justification-by-comparison-with-other-states argument, defendants assert that the Kansas three-judge court approved a plan in which "the population of the largest district is 459,063 and the population of the smallest district 394,056" and that "this act was found to be in compliance with the population requirements of the United States Constitution in **Meeks v. Avery**." "Thus," defendants attempt to argue, "the United States District Court in Kansas . . . has approved congressional districts in the State of Kansas which have population variations well in excess of the districts in the 1967 Missouri Congressional Redistricting Act."

Keeping always in mind the principle stated in **Swann v. Adams III** that a variation from the norm "approved in one State has little bearing on the validity of a similar variation in another State" (385 U.S. at 445), it is appropriate only to add that defendants apparently did not even read the Kansas case before they cited it. That court held that Kansas State census figures could be used; that the accuracy of those figures was not questioned by anyone; that the apparent 1960 federal census variation of 41,666 was not real; that the 8,490 variance under the State census was the actual variance; and that such variance was justified under the rationale of **Martin v. Bush II**, a case that we expressly refused to follow in **Preisler II**. We hold that the Kansas case has no more bearing on our decision in **Preisler III** than it had on our decision in **Preisler II**, for all the reasons we have generally stated in regard to defendants' comparative table argument. See also Appendix D.